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SENATE BILL 2529 By
Herron

HOUSE BILL 2693
By Chumney

AN ACT to amend Tennessee Code Annotated, Title 71, Chapter 3, Part 5, relative to child welfare agencies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-3-533, is amended by deleting that section in its entirety and by substituting instead the following:

(a) Effective January 1, 2001, the department shall ensure that the criminal history of all child care providers is checked and a determination is made of the child care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The department shall ensure that child care providers who have lived in Tennessee continuously for the previous five (5) years are checked for county and state criminal histories. The department shall ensure that all other child care providers are checked for county, state, and national criminal histories. The department may prohibit a child care provider from providing child care if the department determines that the child care provider is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(b)(1) The Tennessee bureau of investigation shall provide to the department the criminal history of any child care provider as requested by the department.

(2) The department shall provide to the Tennessee bureau of investigation, along with the request, the fingerprints of the provider to be checked, any additional information required by the TBI, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories to be signed by the child care provider to be checked. The fingerprints of the provider shall be searched against the criminal history record file and a set of fingerprints shall be forwarded to the federal bureau of investigation for a national criminal history record check.

(c) At the time of application the child care provider whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

"NOTICE: CHILD CARE PROVIDER MANDATORY CRIMINAL HISTORY CHECK. TENNESSEE LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD CARE IN A LICENSED CHILD WELFARE AGENCY.

"Criminal history" includes county, state, and federal convictions or pending indictments of any of the following crimes:

(1) Any felony involving violence or use of alcohol or other intoxicant;

(2) Any misdemeanor involving:

(A) Shooting a firearm or other weapon;

(B) Use of alcohol or other intoxicant; or

(C) Assault and battery or other act of violence against persons or property;

(3) Any crime involving the sale, manufacture or distribution of controlled substances, drugs or narcotics;

(4) Any offense under Title 39, Chapter 13, Part 5; Title 39, Chapter 17, Part 9; and Title 39, Chapter 17, Part 10;

(5) Any act constituting child sexual abuse, as defined in Section 37-1-602(a)2; and

(6) Any similar crimes under federal law or the laws of other states.

Your fingerprints will be used to check the criminal history records of the Tennessee bureau of investigation (TBI) and the federal bureau of investigation (FBI). If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the TBI or FBI identification records. If you disagree with the determination of the Tennessee Department of Human Services on your fitness to provide child care, you may make a request for a contested case hearing under the Uniform Administrative Procedures Act under Title 4, Chapter 5, within thirty (30) days after receiving written notification of disqualification. Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history check shall be guilty of a Class A misdemeanor."

(d) Refusal to consent to a criminal history check is grounds for the department to prohibit the child care provider from providing child care. Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history check shall be guilty of a Class A misdemeanor.

(e) The department shall notify in writing the child care provider, and the child care provider's employer, if any, of the determination by the department whether the child care provider is qualified to provide child care based on the child care provider's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the federal bureau of investigation, the department shall not release nor disclose any portion of the child care provider's criminal

history to the child care provider or the child care provider's employer. The department shall also notify the child care provider of the procedure for completing or challenging the accuracy of the criminal history check and the child care provider's right to contest the department's determination in court.

(f) A child care provider who disagrees with the department's decision may request a contested case hearing under the Uniform Administrative Procedures Act pursuant to Title 4, Chapter 5, within thirty (30) days after receiving written notification of disqualification.

(g) All the information that the department receives through the checking of the criminal history shall be confidential information and shall not be a public record but shall be for the exclusive use of the department and those persons authorized to receive the information for purposes directly related to child safety. The department may destroy the information after it is used for the purposes authorized by this section after one (1) calendar year.

(h) There shall be no liability for negligence on the part of an employer of a child care provider, an owner or operator of a child care agency, a state or local agency, or the employees of a state or local agency, arising from any action taken or omission by any of such persons or entities in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, or willful, malicious, or criminal acts or acts done for personal gain.

(i) The child care provider shall pay the cost of the fingerprinting and the local check. The Tennessee bureau of investigation shall perform the state criminal history check. If the department determines that a child care provider who has lived continuously in the state less than five (5) years is not disqualified based on the local and state criminal history record check, the department shall request a criminal history check from the Tennessee bureau of investigation. The department shall pay the cost

for the national criminal history record check. Payment of such costs are to be made in accordance with the provisions of § 38-6-103.

(j) A child welfare agency, as defined in § 71-3-501, the department of children's services, the department of human services, the department of mental health/mental retardation, any other state agency or any agency that contracts with the state of Tennessee may require all persons applying to work with children in a capacity as a volunteer, a foster parent or an adoptive parent to:

(1) Agree to the release of all investigative records to the child welfare agency, the department of children's services, the department of human services, the department of mental health and mental retardation, any other state agency or any agency that contracts with the state of Tennessee for the purpose of verifying the accuracy of criminal violation information contained on an application to volunteer, or to be a foster or adoptive parent with such agencies; and

(2) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation.

(3) Any costs incurred by the Tennessee bureau of investigation in conducting such investigations of such applicants shall be paid by the child welfare agency, the department of children's services, the department of human services, the department of mental health and mental retardation, any other state agency or any agency that contracts with the state of Tennessee requesting such investigation and information. Payment of such costs shall be made in accordance with the provisions of § 38-6-103.

(k) For purposes of this section:

(1) "Child care", notwithstanding any other law to the contrary, means any child care provided in child welfare agencies required to be licensed under this part;

(2) "Child care provider" means a person who:

(A) Is employed by or seeks to be employed by a child welfare agency, as defined in § 71-3-501, and has contact with children;

(B) Owns, operates or manages or seeks to own, operate or manage a child welfare agency; or

(C) Is employed by the departments of human services, children's services or mental health and mental retardation and has contact with children;

(3) "Criminal history" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children. Such crimes include the following Tennessee crimes:

(A) Any felony involving violence or use of alcohol or other intoxicant;

(B) Any misdemeanor involving:

(i) Shooting a firearm or other weapon;

(ii) Use of alcohol or other intoxicant; or

(iii) Assault and battery or other act of violence against persons or property.

(C) Any crime involving the sale, manufacture or distribution of controlled substances, drugs or narcotics;

(D) Any offense under Title 39, Chapter 13, Part 5; Title 39, Chapter 17, Part 9; and Title 39, Chapter 17, Part 10;

(E) Any act constituting child sexual abuse, as defined in Section 37-1-602(a)2; and

(F) Any similar crimes under federal law or the laws of other states.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.